86-664

NO. 86-_____

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1986

MARTORI BROS. DISTRIBUTORS, et al.,

Petitioners/Cross-Respondents

v.

JYRL JAMES-MASSENGALE, et al.,

Respondents/Cross-Petitioners

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENTS' CONDITIONAL CROSS-PETITION FOR CERTIORARI

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October 20, 1986
#1503-A

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QUESTIONS PRESENTED

1. Whether the court below properly treated abstention as a central and threshold issue, in light of respondents' abandonment of their request for abstention.

2. Whether the court's analysis of Younger v. Harris ("Younger"), 401 U.S. 37 (1971) conflicts with the views expressed by this Court in Ohio Civil Rights Commission et al. v. Dayton Christian Schools ("Dayton"), ___U.S.___ [106 S.Ct. 2718] (June 27, 1986) and its predecessors.

LIST OF PARTIES

The parties to this proceeding are the same as those listed in the initial Petition for a Writ of Certiorari. (Pet., ii, Case No. 86-464.) All respondents listed therein are cross-petitioners here. All petitioners listed therein are cross-respondents here.

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This cross-petition for certiorari relates to the judgment of the United States Court of Appeals for the Ninth Circuit in Martori Brothers, et al. v. Jyrl James-Massengale, et al., No. 84-6137, 84-6274, 84-6275 (9th Cir., Jan 30, 1986, as later modified on April 1, 1986 and June 12, 1986; petitions for rehearing denied, June 24, 1986), and is filed in

response to the Petition for a Writ of Certiorari filed with this Court on September 19, 1986. (U.S. Supreme Court No. 86-464.)

OPINIONS BELOW

The July 9, 1984 unpublished opinion of the United States District Court for the Southern District of California is set forth in petitioners' appendix in Case No. 86-464. (Pet. App., 135a-145a.) The January 30, 1986 published opinion of the United States Court of Appeals for the Ninth Circuit, as modified on April 1, 1986, is reported at 781 F.2d 1349; a subsequent modification is reported at 791 F.2d 799 (1986). These decisions too are set forth in petitioners' appendix in Case No. 86-464. (Pet. App., 146a-163a (Jan. 30, 1986 decision); 164a-165a (Apr. 1, 1986 modification); and 166a-168a (June 12, 1986 modification).)

JURISDICTION

A petition for writ of certiorari

in Case No. 86-464 was filed with this Court on September 19, 1986. Respondents received their copies of the petition on September 22, 1986. The Court therefore has jurisdiction to entertain this cross-petition under Rule 19.5, Rules of the Supreme Court of the United States.

STATUTES INVOLVED

The California Agricultural Labor Relations Act (ALRA or Act, Cal. Lab. Code sec. 1140 et seq.) regulates agricultural labor relations and creates an administrative agency -- the Agricultural Labor Relations Board (ALRB or Board) -- to administer and enforce the Act.

Under California Labor Code section 1160.3, the ALRB is empowered to issue remedial orders "...making employees whole, when the board deems such relief appropriate, for the loss of pay resulting from the employer's refusal to bargain...".

(Section 1160.3 is set forth in its entirety at Pet. App., 173a-174a.)

California Labor Code section 1160.8 provides that parties aggrieved by final orders of the ALRB shall have a right of review in the California Court of Appeal:

> Any person aggrieved by the final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeal having jurisdiction over the county wherein the unfair labor practice in question was alleged to have been engaged in, or wherein such person resides or transacts business, by filing in such court a written petition requesting that the order of the board be modified or set aside. Such petition shall be filed with the court within 30 days from the date of the issuance of the board's order. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such

temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. The findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

An order directing an election shall not be stayed pending review, but such order may be reviewed as provided in Section 1158.

If the time for review of the board order has lapsed, and the person has not voluntarily complied with the board's order, the board may apply to the superior court in any county in which the unfair labor practice occurred or wherein such person resides or transacts business for enforcement of its order. If after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person refused to comply with the order, the court shall enforce such order by writ of injunction or other proper process. The court shall not review the merits of the order.

Article 3, section 3.5 of the California Constitution prohibits the ALRB from declaring any part of the Act

unconstitutional or preempted by federal law unless an appellate court has already so held:

> An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:
> (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
> (b) To declare a statute unconstitutional;
> (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

STATEMENT OF THE CASE

When plaintiffs initiated their ERISA-preemption action in the federal district court, the various ALRB unfair labor practice decisions and remedial orders which they challenged were in one of three procedural stages in the state

system: (1) the pre-Board stage, awaiting action by an ALRB regional director or administrative law judge; (2) pending before the Board; or (3) pending in the California appellate courts on plaintiffs' petitions for review. Defendants accordingly asked the district court to abstain from considering the merits of plaintiffs' challenges. The trial court declined to abstain, ultimately granting defendants' cross-motion for summary judgment on the merits. (See Pet. App., 135a-145a.) Plaintiffs appealed from that judgment, and defendants cross-appealed to preserve their abstention claim.

In their answering brief in the Court of Appeals, defendants (now respondents) initially argued, as an alternative ground for dismissing plaintiffs' complaint, that the district court should have abstained from hearing this matter under Younger and its progeny.

During the March 7, 1985 oral argument before the Ninth Circuit, however, respondents abandoned their abstention argument to ensure that the Court of Appeals would resolve the ERISA preemption issues on their merits.

When it ultimately issued its opinion, the Court of Appeals indeed resolved the various ERISA issues. However, the court first devoted several pages to the Younger abstention doctrine, disregarding respondents' abandonment of the issue and holding, on various grounds which misapprehend the facts and conflict with this Court's views, that "the district court was correct in refusing to abstain." (Pet. App., 155a.)

It should be emphasized that respondents are not now resurrecting their abstention claim; they remain convinced that their interests here are better served by reaching the merits of petitioners'

ERISA-based challenges. However, if the Court is disposed to grant the initial petition for writ of certiorari in this case, respondents ask, through this cross-petition, that the Court review as well the questions presented herein.

REASONS FOR GRANTING THE CROSS-PETITION

I

THE COURT OF APPEALS' ANALYSIS OF YOUNGER WAS UNNECESSARY BECAUSE ABSTENTION WAS NO LONGER AN ISSUE IN THE CASE.

As this Court observed in Brown v. Hotel & Restaurant Employees & Bartenders, ___ U.S.___ [104 S.Ct. 3179, 3185, n.9] (1985), a federal court need not address the merits of a Younger abstention theory when, as here, the state has agreed to the court's adjudication of the controversy. The considerations of comity underlying the abstention doctrine are no longer implicated when the state "submits to the jurisdiction of [a federal court] in order to obtain a more expeditious and final resolution of the merits..."(Ibid.)

The ALRB submitted to the Court of Appeals' jurisdiction here for exactly those reasons.[1/] Nevertheless, the court below chose to analyze Younger abstention at length, and its opinion fails to note that the State had urged the court to reach the merits of petitioners' various federal claims. (See e.g., Pet. App., 148a, n.3.) Brown demonstrates that the court's abstention analysis was quite unnecessary. (See also Dayton, 106 S.Ct. at 2722 ["A state may of course voluntarily submit to federal jurisdiction even though it might have had a tenable claim for abstention."].)

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1. At the opening of his oral argument on March 7, 1985, counsel for the Board and related parties stated that, in light of the time and energy already expended in addressing the merits of plaintiffs' ERISA claims, the Board preferred "that the District Court's decision be affirmed as it stands, treating the merits," notwithstanding its earlier claim that the federal courts should abstain.

To be sure, counsel may then have confused the matter by asking the court not only to reach and decide the ERISA

(Footnote continued)

(Footnote continued)

issue, but also "to point out the fallacies of appellants' arguments with respect to the abstention doctrine under these circumstances," and to include "some language addressing the abstention issue... for the edification of future cases."

But the court was plainly dissatisfied with counsel's inartful approach, and it appeared that the abstention issue was put finally to rest when, at the close of the Board's argument, the court indicated that the Board could not have it both ways. It must either completely abandon its abstention argument or risk not having the ERISA issues resolved. Counsel then abandoned his abstention argument altogether:

JUDGE REINHARDT: That's all very well. Now what is your position? Should we abstain or shouldn't we?

MR. STONE: No. My position is that the District Court, at the onset, should have abstained, but that now that everyone has considered the merits, it's probably in the Board's best interest and the State of California's best interest to have the decision on the merits affirmed.

(Quotations are from clerk's cassette recording of oral argument, side two, 165-230.)

II

THE COURT OF APPEALS' APPLICATION OF YOUNGER ABSTENTION PRINCIPLES CONFLICTS WITH DECISIONS OF THIS COURT AND OF OTHER CIRCUIT COURTS OF APPEALS, AND OVERLOOKS KEY FACTS AND RELEVANT STATE LAW.

A. The Court's Evaluation Of The Board's Administrative Unfair Labor Practice Proceedings Is In Direct Conflict With This Court's Dayton Decision And Contradicts Relevant State Law.

As the court below noted, the various ALRB "makewhole" orders challenged in this proceeding were "in differing postures before the ALRB and the California Courts of Appeal" at the time petitioners initiated the instant action in federal district court. (Pet. App., 147a-148a.) The court further observed that California Labor Code section 1160.8 gives any aggrieved party the right to obtain judicial review of final ALRB orders in the California Court of Appeal. (Pet. App., 148a-149a.) And the court correctly noted that the doctrine of abstention developed

in Younger requires federal courts to abstain,

> ...whenever there is an ongoing state judicial proceeding, the proceeding concerns vital state interests, and there is an adequate opportunity to present the federal claims in the state proceedings.

(Pet. App., 151a.) The court then quickly disposed of the first element, holding -- without explanation -- that:

> Because the proceedings before the ALRB are not judicial proceedings, the district court was not required to abstain in deference to the ALRB.

(Pet. App., 152a.)

The court's theory, evidently, is that abstention does not apply to state administrative proceedings. But that approach flatly contradicts this Court's application of Younger abstention in the Dayton case:

> We have also applied [Younger abstention] to state administrative proceedings in which important state interests are vindicated, so long as in the course of those

> proceedings the federal plaintiff would have a full and fair opportunity to litigate his constitutional claim.

(106 S.Ct. at 2723.) Indeed, this Court observed that the Court of Appeals' conclusion to the contrary in the instant case stands alone:

> The lower courts have been virtually uniform in holding that the Younger principle applies to pending state administrative proceedings in which an important state interest is involved. [Citations omitted.] Only the recent case of Martori Bros. Distributors v. James-Massengale, 781 F.2d 1349, 1354 (CA9 1986), departs from this position, and it does so without analysis.

(Id., at 2723, n.2.) The Court then offered a possible explanation for the Martori result:

> Of course, if state law expressly indicates that the administrative proceedings are not even "judicial in nature," abstention may not be appropriate. See Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 237-239 (1984).

(Ibid.) However, that rationale has no application here, since, as explained below,

California law establishes that the ALRB's administrative unfair labor practice proceedings are judicial in nature. Thus, although the Court of Appeals relied on Hawaii Housing Authority, that reliance was quite misplaced.

In considering the ALRB's administrative proceedings, the California Court of Appeal has observed:

> It is clear that the board is authorized by statute to exercise functions of a judicial nature, in that it determines controverted facts between private litigants, makes findings and issues a remedial order or decision.

(Perry Farms, Inc. v. Agricultural Labor Relations Bd., 86 Cal.App.3d 448, 460, n.5 (1978); emphasis added. See also Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd., 24 Cal.3d 335, 346 [595 P.2d. 579] (1979) [ALRB exercises "judicial powers" in conducting unfair labor practice proceedings]; and Sandrini

Brothers v. Agricultural Labor Relations Bd., 156 Cal.App.3d 878, 883 (1984) [ALRB is "quasi-judicial" agency.].)

Additionally, the ALRB's administrative proceedings -- unlike the administrative proceedings in Hawaii Housing Authority -- represent the first step toward a state court proceeding to enforce the ALRB' decision and order.[2/] And, because the Board provides appropriate procedural safeguards at the

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2. The Court of Appeals further erred when, in note 11 (Pet. App., 155a), it stated that "the state was not the plaintiff" in the ongoing state court proceedings involving petitioners. In fact, only the State can initiate unfair labor practice hearings under the ALRA. California Labor Code section 1160.2 provides that, whenever it is charged that an unfair labor practice has occurred, "the board, or any agent or agency of the board designated for such purposes, shall have the power to issue...a complaint... [and] a notice of hearing..." Thus, though a private party inevitably files the petition to challenge ALRB remedial orders in the State Court of Appeal (see Cal. Lab. Code sec. 1160.8) that is but one final procedural step in a process which, like that in Dayton, is initiated by the State for the protection of public rights.

administrative level, the California Legislature has accorded finality to the ALRB's factual findings; those findings must be upheld if they are supported by substantial evidence. (Cal. Lab. Code sec. 1160.8; Tex-Cal Land Management, Inc., 24 Cal.3d 335, 345-346, supra.) It is therefore clear that Hawaii Housing Authority neither requires nor justifies a refusal to abstain in the very different setting presented by pending ALRB administrative proceedings.

Thus, as this Court surmised in Dayton, the unwillingness of the court below to apply Younger abstention to state administrative proceedings is in direct conflict with all other federal authorities addressing the issue. It further manifests a disregard of the nature of the Board's proceedings as explicated by the state courts.

B. The Court's Treatment of Article 3, Section 3.5 of the California Constitution Also Conflicts Directly With Dayton And Misstates The Facts.

After holding that the Board's administrative proceedings did not qualify as judicial proceedings, the court below made the following additional statement:

> Even if we were to hold that the ALRB proceedings were judicial in nature, abstention would still not be appropriate because the Employers cannot raise their federal claims before the ALRB. Article 3, section 3.5 of the California Constitution prohibits the ALRB from declaring that a state statute is unconstitutional or preempted by federal law, unless an appellate court has already so held.

(Pet. App., 152a, n.8.) The court's reliance on Article 3, section 3.5 is erroneous in three respects: (1) it directly conflicts with this Court's holding in Dayton; (2) it ignores the Ninth Circuit's own prior determinations that Article 3, section 3.5 does not deprive parties of the opportunity to raise

constitutional claims at the administrative level; and (3) it ignores the fact that the employers here could have raised their claims to the ALRB in any event because the claims would not, even if true, have required nullification of a state statute.

In Dayton, this Court was faced with an argument very similar to that propounded by the court below -- namely, that a state administrative proceeding is not deserving of Younger abstention because the administrative agency cannot declare its enabling statute unconstitutional. The Court quickly dismissed that argument, noting that in Dayton, as here, the agency would be free to consider applicable federal authorities in construing its enabling statute, and, as here, that state courts are free, on review, to overturn the statute.

> [E]ven if Ohio law is such that the Commission may not consider the constitutionality of the

> statute under which it operates, it would seem an unusual doctrine, and one not supported by the cited case, to say that the Commission could not construe its own statutory mandate in the light of federal constitutional principles. Cf. NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979). In any event, it is sufficient under Middlesex [457 U.S. 423] at 436, that constitutional claims may be raised in state court judicial review of the administrative proceedings.

(106 S.Ct. at 2724.)

Indeed, this Court has, in another context, considered the very California Constitutional provision at issue here, holding that Article 3, Section 3.5 does not prevent parties from raising their federal claims so long as state law provides for judicial review of the administrative proceeding in question. The court noted that, even though the administrative agency itself might be precluded from concluding that a given state tax law is unconstitutional,

> [n]othing in this scheme prevents

> the taxpayer from 'rais[ing] any and all constitutional objections to the tax' in the state courts.

(California v. Grace Brethren Church, 457 U.S. 393, 414 (1982), quoting from Rosewell v. LaSalle National Bank, 450 U.S. 503, 514 (1981).)

The Martori court itself noted that petitions for review of ALRB orders provide this opportunity for judicial consideration of federal claims:

> The proceedings before the Court of Appeal clearly are judicial in nature and the Employers have a full opportunity to raise their federal claims before the Court of Appeal.

(Pet. App., 152a.) Yet the court nevertheless regarded Article 3, Section 3.5 as an obstacle to abstention. That holding is not only at odds with this Court's Dayton analysis; it is also directly contrary to previous Ninth Circuit authority holding that Article 3, section 3.5 does not deprive plaintiffs of an opportunity to state their constitutional

claims before California administrative agencies in order to preserve them for subsequent judicial review. (E.g. Southern Pacific Transp. v. P.U.C. of State of Cal., 716 F.2d 1285, 1290-1291 (9th Cir. 1983), cert. den. ___U. S. ___, [104 S.Ct. 1908] (1984); Capitol Industries - EMI, Inc. v. Bennett, 681 F.2d 1107, 1117-1118, cert. den. 455 U.S. 942 (1982).)

Furthermore, the decision disregards previous Ninth Circuit decisions which, consistent with Dayton, hold that Article 3, section 3.5 does not preclude an administrative agency from construing its statute in light of federal constitutional principles. These cases implicitly recognize that parties can indeed raise their federal constitutional claims before -- and have them considered by -- California administrative agencies. (E.g. Dash, Inc. v. Alcoholic Beverage Control Appeals Bd., 683 F.2d 1229, 1234 (9th Cir.

1983); Capitol Industries - EMI, Inc. v. Bennett, 681 F.2d 1107, 1117, n.28, supra.)[3/]

Finally, the Court of Appeals' reliance on Article 3, section 3.5 is based on a fundamental misapprehension of the facts in this case. The employers' complaint in this federal action attacked only the ALRB's policy of treating lost fringe benefits as an aspect of the overall damages suffered by the victims of unfair labor practices. Nothing in the enabling statute dictates that the makewhole award be calculated in this manner; rather, California Labor Code

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3. Significantly, the California Supreme Court has interpreted Article 3, Section 3.5 in the same way. Although an agency cannot, under that provision, refuse to enforce statutes on constitutional grounds, they are free to consider constitutional questions (Golden v. Public Utilities Commission, 23 Cal.3d 638, 688, n.18 [592 P.2d 289] (1979). See also Regents of the University of California. v. Public Employment Relations Bd., 139 Cal.App.3d 1037, 1042 (1983).)

section 1160.3 simply provides that the Board is empowered to order makewhole,

> ...when the board deems such relief appropriate, for the loss of pay resulting from the employer's refusal to bargain, and to provide such other relief as will effectuate the policies of [the Act].

The precise definition and calculation of this "makewhole" remedy are left entirely to the informed discretion of the Board. Indeed, it is the Board's choice, not the Legislature's, to award or not award makewhole relief at all in any particular case,[4/] and it is the Board's present method of computing makewhole which the plaintiffs have challenged here.

Thus, the Board would be free to design any other reasonable formulation of

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4. See, e.g., Carian v. Agricultural Labor Relations Bd., 36 Cal.3d 654, 673-674 [685 P.2d 701] (1984) [Board has wide discretion to fashion appropriate remedies for unfair labor practices]; Highland Ranch v. Agricultural Labor Relations Bd., 29 Cal.3d 848, 856 [633 P.2d 949] (1981) [ALRB enjoys even broader remedial discretion than does its federal counterpart, the NLRB.].

makewhole, or to eliminate makewhole relief altogether, in response to the employers' ERISA and constitutional challenges, and the Board could manifestly do so without declaring any portion of its enabling statute to be unconstitutional or preempted. Accordingly, the proscriptions of Article 3, section 3.5 actually have no bearing whatsoever on the instant case.

C. The Court's Disregard Of The State's Vital Interest Conflicts Directly With This Court's Dayton Analysis And With Other Authorities Treating The Question.

Though the court below recognized "that the state's interest in the ALRA is substantial" (Pet. App., 166a.), it nevertheless concluded that the interest is not sufficiently vital to satisfy the Younger requirement:

> Although admittedly the state's interest is important it is not qualitatively as vital or central to the state's interest as is its interest in its criminal justice system or the fundamental

> operation of its court system. We decline to extend Younger here, since a contrary holding would diminish the significance of the phrase "extraordinary circumstances" and readily lead to a rule that Younger abstention is required any time the state demonstrates a clear interest. We cannot violate our clear obligation to exercise federal jurisdiction. Accordingly, we hold that the district court was correct in refusing to abstain.

(Pet. App., 167a-168a.) The court had earlier stated that the "vital state interest" required by Younger and Middlesex [5/] is present only in three categories of cases: "criminal proceedings"; proceedings "in aid of or closely related to a criminal proceeding"; and proceedings which "involve the fundamental operation of the state's court system." (Pet. App., 153a.) The Board submits that this very narrow view of Younger abstention is not borne out by this Court's abstention decisions, and that

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5. Middlesex Ethics Committee v. Garden State Bar Association, 457 U.S. 423 (1982).

the Court of Appeals impermissibly undervalued California's critical interest in maintaining peace, protecting collective bargaining rights, and promoting healthy labor relations in its agricultural industry.

1. California Has A Compelling Interest In the ALRA.

Congressional exclusion of agricultural workers from the protections of the National Labor Relations Act (29 U.S.C. sec. 152(3)) had disastrous results for agricultural labor relations in California, leaving "an essentially unregulated state of labor relations" which was rife with problems, abuses, and violence. (Englund v. Chavez, 8 Cal.3d 572, 597 [504 P.2d 457] (1972).) In Englund, the California Supreme Court urged the State Legislature to act, warning that "[r]elief from the 'bitter' hardships that all parties to the labor disputes face under the current law [citation omitted]

must await a comprehensive overhaul of the state's labor statutes." (Ibid.)

That relief came in 1975 with the enactment of the ALRA. The importance of the state policies which the ALRA embodies, and which the ALRB is charged with carrying out, is surely beyond debate. In enacting the ALRA, the Legislature declared:

> [T[he people of the State of California seek to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations.
>
> This enactment is intended to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state. The Legislature recognizes that no law in itself resolves social injustice and economic dislocations.
>
> However, in the belief the people affected desire a resolution to this dispute and will make a sincere effort to work through the procedures established in this legislation, it is the hope of the Legislature that farm laborers, farmers, and all the people of California will be served by the provisions of this act.

(ALRA, Stats. 1975, Third Ex. Sess., ch. 1, sec. 1, p. 4013.) Thus, in adopting the ALRA, the Legislature was motivated by a desire to stabilize labor relations in one of the State's most important industries, and a desire to improve conditions for an historically disadvantaged sector of the State's workforce -- both important state policies.

The ALRB outlaws, among other things, restraint and coercion (Cal. Lab. Code sec. 1153(a), 1154(a), 1154(d)) and forms of election fraud (Cal. Lab. Code sec. 1154.6). Enforcement of the Act brings the Board in touch with myriad forms of criminal and crime-like behavior, including not only the obvious occasions of strike violence, crop loss, and property damage, but also homicides (e.g. Mario Saikhon, Inc., 79-CE-72-EC (1979); Sikkema Dairy, 83-RC-20-F, 83-CE-90-F, et al. (1983)), beatings (e.g. Tex-Cal Land

Management, 3 ALRB No. 14 (1977); Western Conference of Teamsters, 3 ALRB No. 57 (1977)), armed vigilantes (e.g. Western Tomato Growers, 3 ALRB No. 51 (1977)), assaults and threats (e.g. Harry Carian Sales, 6 ALRB No. 55 (1980); M. Caratan, ALRB No. 33 (1983)), and scornful mobs (e.g. United Farms Workers, 6 ALRB No. 58 (1980)).

It is a crime to obstruct Board agents in the performance of their duties. (Cal. Lab. Code sec. 1151.6.) And the ALRA to some extent preempts California criminal statutes. (E.g. Banales v. Municipal Court, 132 Cal.App.3d 67, 73 (1982) [criminal trespass prosecution preempted where trespassers' conduct arguably protected under the Act.].) The ALRB is involved in matters of public safety and order (e.g. Bertuccio v. Superior Court, 118 Cal.App.3d 363, 373 (1981) [Board should have opportunity to participate in

private party's action to enjoin mass picketing, violence, and obstructions in ingress and egress.]), and has been successful in curtailing violence. (E.g. Agricultural Labor Relations Bd. v. California Coastal Farms, Inc., 31 Cal.3d 469, 481 [645 P.2d 739] (1982) [Injunction obtained by ALRB greatly reduced strike tension and incidents of violence.].)

Thus, this is not merely a local regulation governing relatively trivial local concerns, nor is it an attempt to dictate terms in an arena exclusively controlled by ERISA. (Cf. Champion International Corp. v. Brown, 731 F.2d 1406 (9th Cir. 1984).) Rather, it is a comprehensive statute designed to address critical areas of state concern: violence, property damage, coercion, crop loss, voter fraud, and other historic abuses and injustices in agricultural

labor. (Englund, 8 Cal.3d 572, 597, supra.) Thus, the court below erred in holding that California's concern in the ALRA is not sufficiently vital to qualify for Younger abstention.

2. The Court's Restrictive Analysis Contradicts This Court's Reasoning In Dayton And Disregards The Nature Of Other Cases In Which Younger Abstention Has Been Applied.

As noted, the ALRA seeks to promote collective bargaining, to eliminate violence and discord, and to outlaw discrimination against farm workers based on their participation in concerted and/or union activities. It reflects a state interest very like that underlying the Ohio statute considered by this Court in Dayton -- a statute prohibiting sex discrimination. This Court identified the interest therein and readily deemed it sufficient for Younger abstention:

> We have no doubt that the elimination of prohibited sex

> discrimination is a sufficiently important state interest to bring the present case within the ambit of the cited authorities. [i.e. Younger v. Harris, 401 U.S. 37 (1971); Huffman v. Pursue, Ltd., 420 U.S. 592 (1975); Juidice v. Vail, 430 U.S. 327 (1977); Trainor v. Hernandez, 431 U.S. 434 (1977); and Moore v. Sims, 442 U.S. 415 (1979)]

(106 S.Ct. at 2723.) Nowhere in this, its latest exposition of Younger, did the Court indicate that Younger abstention cases are limited to those falling into the three categories outlined in Martori (Pet. App., 153a.), and it is plain that Ohio's sex discrimination proceedings were not (1) criminal, (2) closely related to criminal, or (3) fundamentally involved with the operation of state courts. Instead, the proceedings were merely state administrative proceedings involving an important state interest. This Court found that state concern sufficient to satisfy the "vital interest" element of Younger abstention.

An examination of other abstention

cases further highlights the unduly restrictive nature of the Court of Appeals' analysis below. If states have a "vital" interest in deceptive trade practices (Williams v. Washington, 554 F.2d 369 (9th Cir. 1977)), in fraudulently obtained welfare benefits (Trainor v. Hernandez, 431 U.S. 434 (1977)), in violations of police department grooming regulations (McCune v. Frank, 521 F.2d 1152 (2d Cir. 1975)), in "the economic impact of plant closings" (Marcal Paper Mills, Inc. v. Ewing, 790 F.2d 195, 197 (1st Cir. 1986)), and in disqualifications from state medicaid programs (Lang v. Berger, 427 F.Supp. 204 (S.D.N.Y., 1978)), then a fortiori the State of California has a vital interest in the enforcement of its ALRA.

CONCLUSION

Respondents reemphasize that they have abandoned their Younger abstention

arguments and have submitted to the federal courts' jurisdiction in order to obtain a final resolution of the employers' claims herein. The fact remains, however, that the Court of Appeals nevertheless elected to address the Younger abstention doctrine at length, and that, for the reasons presented above, its analysis is flawed in several respects.

Accordingly, in the event that this Court is inclined to grant the writ of certiorari sought by petitioners, respondents urge the Court to consider as well the Martori court's abstention discussion, and to correct that treatment

to conform with the views expressed by this Court in Dayton and its predecessors.

Dated: October 20, 1986

Respectfully submitted,

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